IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MICHAEL MAYER, individually and on behalf of all others similarly situated, Plaintiff, v. DANCING BEAR ENTERTAINMENT SYSTEMS, INC., a Georgia corporation, d/b/a Onyx, PONY TAIL, INC., a Georgia corporation, d/b/a Onyx, GALARDI SOUTH ENTERPRISES CONSULTING, INC., a Georgia corporation, d/b/a Onyx, and JOHN DOES 1-100 Defendants.	Case No.

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

1. Plaintiff Michael Mayer ("Mayer" or "Plaintiff") brings this Class Action Complaint against Defendants Dancing Bear Entertainment Systems, Inc., Pony Tail, Inc., and Galardi South Enterprises Consulting, Inc., (collectively doing business as Onyx) ("Onyx"), and John Doe Defendants, to stop Defendants' practice of making unsolicited text message calls to cellular telephones even after the consumer requests for the text messages to stop, and

to obtain redress for all persons injured by its conduct. Plaintiff Mayer, for his Class Action Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

PARTIES

2. Plaintiff Mayer is a natural person and resident of the State of Florida. Plaintiff resides in Key Largo, FL.

3. Defendant Dancing Bear Entertainment Systems, Inc. is a corporation incorporated and existing under the laws of the State of Georgia. Dancing Bear Entertainment Systems, Inc. does business in the State of Georgia and in this District—specifically, it owns, operates, and/or manages the Onyx nightclub located at 1888 Cheshire Bridge Rd NE, Atlanta, GA 30324. It also sends text messages to consumers in this district. Dancing Bear Entertainment Systems, Inc.'s registered agent is Dennis Williams, Esq., located at 2555 Chantilly Drive, Atlanta, GA 30324. Its principal office address is located at 2221 Peachtree Road, D105, Atlanta, GA 30309.

4. Defendant Pony Tail, Inc. is a corporation incorporated and existing under the laws of the State of Georgia. Pony Tail, Inc. does business in the State of Georgia and in this District—specifically, it owns, operates, and/or manages the Onyx nightclub located at 1888 Cheshire Bridge Rd NE, Atlanta, GA

30324. It also sends text messages to consumers in this district. Pony Tail, Inc.'s registered agent is Dennis Williams, Esq., located at 2555 Chantilly Drive, Atlanta, GA 30324. Pony Tail, Inc.'s principal office address is 2555 Chantilly Drive, Atlanta, GA 30324.

5. Defendant Galardi South Enterprises Consulting, Inc. is a corporation incorporated and existing under the laws of the State of Georgia. It does business in the State of Georgia and in this District—specifically, it owns, operates, and/or manages the Onyx nightclub located at 1888 Cheshire Bridge Rd NE, Atlanta, GA 30324. It also sends text messages to consumers in this district. Galardi South Enterprises Consulting, Inc.'s registered agent is Dennis Williams, Esq., located at 2555 Chantilly Drive, Atlanta, GA 30324. Galardi South Enterprises Consulting, Inc.'s principal office address is also 2555 Chantilly Drive, Atlanta, GA 30324.

6. The exact role of each Defendant in the ownership, operation, management, and promotion of Onyx is presently only known by Defendants, however each does business as Onyx.

7. On information and belief, Defendants John Does 1-100 are clients, agents and affiliates who work for Onyx (such as club promoters) to make the text messages calls to consumers on behalf of Defendants. The identities of the John Doe Defendants will be obtained through discovery of Onyx's records.

JURISDICTION & VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 ("TCPA") a federal statute.

9. The Court has personal jurisdiction over Defendants and venue is proper in this District because Defendants are registered to do business in the State of Georgia, regularly conduct business in the State of Georgia and in this District, own and/or lease real property in Georgia, and a substantial part of the events giving rise to the claims asserted here occurred in this District. The court further has jurisdiction over the John Doe Defendants as such Defendants made the calls to Plaintiff and the other class members on behalf of Defendants. Moreover, all Defendants are domestic corporations of Georgia.

COMMON ALLEGATIONS OF FACT

Bulk SMS Marketing

10. In recent years, nightclub owners have increasingly looked to alternative technologies through which to send bulk messages to potential customers as inexpensively and as efficiently as possible.

11. Bulk text messaging, or SMS marketing, has emerged as a new and direct method of communicating and soliciting consumer business. The term "Short Message Service" or "SMS" is a messaging system that allows

cellular telephone subscribers to use their cellular telephones to send and receive short text messages, usually limited to 160 characters. An SMS message is a text message call directed to a wireless device through the use of the telephone number assigned to the device.

12. When an SMS message call is successfully made, the recipient's cell phone rings, alerting him or her that a call is being received. As cellular telephones are inherently mobile and are frequently carried on their owner's person, calls to cellular telephones, including SMS messages, may be received by the called party virtually anywhere worldwide and instantaneously.

Defendants Transmit Text Messages to Consumers Who Do Not Want Them

The Onyx Defendants

13. Defendants Dancing Bear Entertainment Systems, Inc., Pony Tail, Inc., and Galardi South Enterprises Consulting, Inc. own, operate, promote and/or manage a nightclub in Atlanta, Georgia, known commonly as The Onyx or Onyx.

14. For Onyx to recruit consumers to attend its nightclub and events, Onyx has resorted to sending text messages to consumers who have not consented to them.

15. In sending these promotional text messages, Onyx (or the John

Doe Defendants acting at Onyx's direction) took no steps to acquire the oral or written prior express consent of Plaintiff or the Class who received the unsolicited text messages.

16. On information and belief, to send these promotional text messages Onyx has contracted with one or more third-parties—John Doe Defendants. Joe Doe Defendants are agents, affiliates, and/or clients—such as nightclub promoters—who have sent the text messages to Plaintiff and the Class at Onyx's direction, for Onyx's benefit, and within Onyx's supervision and/or control.

17. Onyx made, or had made on its behalf, the same (or substantially the same) text message calls *en masse* to thousands of cellular telephone numbers throughout the United States.

18. In sending the text messages at issue in this Complaint, Onyx or its agents utilized an automatic telephone dialing system. Specifically, the hardware and software used by Onyx (or its agent(s)) has the capacity to store, produce, and dial random or sequential numbers, and/or receive and store lists of telephone numbers, and to dial such numbers, *en masse,* in an automated fashion without human intervention. Onyx's automated dialing equipment includes features substantially similar to a predictive dialer inasmuch as it has the latent capacity to make numerous text message calls simultaneously

(without human intervention).

19. Onyx was and is aware that these above described text messages were and are being made without the prior express written consent of the text message recipients.

FACTS SPECIFIC TO PLAINTIFF MAYER

20. Plaintiff registered his cellular telephone on the do not call registry on August 18, 2012.

21. On November 30, 2015 Plaintiff Mayer received a text message from 404-680-9142 which read, "In school she was a nerdy girl...now she's a Dancer! See Her incredible Transformation This Tuesday @Onyx Free Entry Text ONYX to 33733 No Charge For You!" Plaintiff Mayer received the exact same text message on his cellular phone from the phone number 706-346-4322 on December 9, 2015 which read "In school she was the nerdy girl, now shes a Dancer! See her incredible Transformation 2nite @Onyx SHOW TEXT ENTER FREE TIL 1AM! No Charge For You TILL 1am!"

22. Even though the texts offered a supposedly free entry, the texts were made for a commercial purpose since Onyx's business relies on food, drink, and entertainment sales to its entrants to compensate for their free entrance. The messages constitute telemarketing.

23. Mayer never consented either orally or in writing to receive text

messages from Onyx. Mayer was never presented with consent language indicating that he was agreeing to receive text messages on his cellphone with the use of an automatic telephone dialing system. Likewise, he was never provided any consent disclosure indicating that providing his consent to receive text messages was not a condition of any sale. Furthermore, Mayer has never even visited Onyx's establishment.

24. Mayer has been receiving unsolicited text messages from Onyx promoting Onyx for a year.

25. When Mayer first started receiving these promotional text messages, he replied back to the texts that he was not interested, to stop the texts, and to opt him out of any more texts. He estimates that he sent at least 5 opt out, stop, and/or "remove me" requests.

26. Since his opt-out requests were not honored, Plaintiff began blocking the incoming texts. This also did not work, as Onyx kept sending him promotional text messages from different numbers.

27. Plaintiff Mayer believes he has received over twenty (20) text messages from Onyx after he has requested that Onyx stop sending him such messages.

28. At no time did Plaintiff Mayer consent to the receipt of text message calls from Onyx, let alone providing prior oral or written express

consent to Onyx.

29. By making unauthorized text message calls as alleged herein, Onyx has caused consumers actual harm. In the present case, a consumer could be subjected to many unsolicited text messages as the Onyx's opt out mechanism does not work.

CLASS ALLEGATIONS

30. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and all others similarly situated and seeks certification of the following three Classes:

> **No Consent Class**: All persons in the United States who (1) received a text message from Onyx (or a third party acting on Onyx's behalf) promoting Onyx, (2) on his or her cellular telephone, (3) from the from February 15, 2012 to the present, (4) and who provided prior express consent in the same manner as Onyx claims that Plaintiff provided such prior express consent.

> **Replied Stop Class**: All persons in the United States who (1) from February 15, 2012 to the present, received (2) on their cellphone at least one text message promoting Onyx, (3) replied to the text message with an instruction for Oynx to no longer send messages, and (4) thereafter received at least one additional text message to their same cellphone number beyond a message simply confirming the opt out, and (5) who did not reauthorize Onyx to send them text messages after they opted out.

> **Do Not Call Registry Class**: All persons in the United States who (1) Onyx (or a third person acting on behalf of Onyx) called more than one time on his/her cellphone; (2) within any 12-month period starting from February 15, 2012 through the present; (3) where the cellphone number had been listed on the National Do Not Call Registry for at least thirty days; (4) for the purpose of selling Onyx's products and services; and (5) for whom Onyx claims it obtained prior express consent in the same manner as Onyx claims it obtained prior express consent to call the Plaintiff.

31. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which Defendants' or their parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendants have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the class definition following appropriate discovery.

32. On information and belief, there are hundreds, if not thousands, of members of the Classes such that joinder of all members is impracticable.

33. There are several questions of law and fact common to the claims of Plaintiff and the other members of the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes members' that may be answered in a single stroke include but are not limited to the following:

a. whether Defendants' conduct constitutes a violation of the TCPA;

b. whether Defendants' utilized an automatic telephone dialing system to send text messages to members of the Classes;

c. whether members of the Classes are entitled to treble damages based on the willfulness of Defendants' conduct;

d. whether Defendants obtained prior express written consent to contact any class members;

e. whether Defendants' text messages constitute telemarketing, and

f. to the extent Defendants' conduct does not constitute telemarketing, whether Defendants obtained prior express oral consent to contact any class members;

g. whether Defendants honored requests to stop sending messages or whether it serially failed to honor such messages;

h. Whether Defendants systematically sent text message calls to consumers whose telephone numbers were registered with the National Do Not Call Registry; and

i. whether Defendants should be enjoined from such conduct in the future.

34. The factual and legal bases of Defendants' liability to Plaintiff and to the other members of the Classes are the same, resulting in injury to the Plaintiff and to all of the other members of the Classes, including the annoyance and aggravation associated with such messages as well as the loss of data and temporary inability to enjoy and use their cellphones, as a result of the transmission of the wireless spam alleged herein. Plaintiff and the other members of the Classes have all suffered harm and damages as a result of

Defendants' unlawful and wrongful conduct of transmitting wireless spam. Plaintiff's claims are typical of the claims of the members of the Classes as all members of the Classes are similarly affected by Defendants' wrongful conduct. Plaintiff, like other members of the Classes, received unsolicited spam text message calls from Onyx. Plaintiff is advancing the same claims and legal theory on behalf of himself and all absent members of the Classes.

35. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Classes. Plaintiff's claims are made in a representative capacity on behalf of the other members of the Classes. Plaintiff has no interest antagonistic to the interests of the other members of the proposed Classes and is subject to no unique defenses. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the other members of the Class.

36. The suit may be maintained as a class action under Federal Rule of Civil Procedure 23(b)(2) because Defendants have acted, and/or have refused to act, on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief. Specifically, injunctive relief is necessary and

appropriate to require Defendants to discontinue sending unsolicited and unauthorized spam text messages to the public and to honor their opt-out requests. Likewise, Defendants have acted and fails to act on grounds generally applicable to the Plaintiff and the other members of the Classes in transmitting the wireless spam at issue, requiring the Court's imposition of uniform injunctive and declaratory relief to ensure compatible standards of conduct toward the members of the Classes.

37. In addition, this suit may be maintained as a class action under Federal Rule of Civil Procedure 23(b)(3) because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Absent a class action, most members of the Classes would find the cost of litigating their claims to be prohibitive, and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication. The claims asserted herein are applicable to all customers throughout the United States who received an unsolicited spam text message from Defendants. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation

necessitated by Defendants' conduct. It would be virtually impossible for members of the Classes individually to redress effectively the wrongs done to them. Even if the members of the Classes could afford such litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

38. Adequate notice can be given to the members of the Classes directly using information maintained in Defendant's records or through notice by publication.

FIRST CAUSE OF ACTION
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227 *et seq*.)
(On behalf of Plaintiff Mayer and the No Consent Class)

39. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

40. Defendants and/or their agent transmitted unsolicited text message calls to cellular telephone numbers belonging to Plaintiff and the other members of the Classes using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential

number generator, and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*, without human intervention. The telephone dialing equipment utilized by Defendants and/or their agent, which is substantially similar to a predictive dialer, dialed numbers from a list, or dialed numbers form a database of telephone numbers, in an automatic and systematic manner.

41. These text calls were made *en masse* and without the prior express consent of the Plaintiff and the other members of the Classes to receive such wireless spam.

42. Defendants and their agents, the John Doe club promoters, failed to obtain prior express written consent that notified consumers they were agreeing to be called on their cellphones with the use of an automatic telephone dialing system. Likewise, no consent disclosure was ever provided indicating that giving one's consent to receive text messages or providing one's telephone number (directly or indirectly) was not a condition or requirement of any sale.

43. Defendants have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendants' conduct, Plaintiff and the other members of the Classes are each entitled to, under section 227(b)(3)(B), a minimum of $500.00 in damages for each violation of such act.

44. In the event that the Court determines that Defendants' conduct was willful and knowing, it may, under section 227(b)(3)(C), treble the amount of

statutory damages recoverable by Plaintiff and the other members of the Classes.

SECOND CAUSE OF ACTION
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227 *et seq*.)
(On behalf of Plaintiff Mayer and the Replied Stop Class)

45. Plaintiff repeats and realleges the above paragraphs and incorporates them herein by reference.

46. Onyx and/or their agent transmitted unsolicited text message calls to cellular telephone numbers belonging to Plaintiff and the other members of the Replied Stop Class using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*, without human intervention.

47. The telephone dialing equipment utilized by Onyx and/or Onyx's agent, which is substantially similar to a predictive dialer, dialed numbers from a list, or dialed numbers form a database of telephone numbers, in an automatic and systematic manner.

48. These text calls were made *en masse* and without the consent of the Plaintiffs and the other members of the Replied Stop Class to receive such wireless spam. Indeed, consent had been revoked by everyone since they each had responded "STOP."

49. The text messages (in Plaintiff's estimation, at least twenty (20) in

total) to Plaintiff and the Class were made after any consent had been expressly revoked by responding "STOP." This alone violates the TCPA.

50. Additionally, Onyx's supposed opt out mechanism isn't cost free. Among other things, it requires the transmission of data from the user's cell phone that results in a reduction of the user's allowable data.

51. Based on such conduct, Onyx has violated 47 U.S.C. § 227(b)(1)(A)(iii).

52. As a result of such conduct, Plaintiff and the other members of the Class are each entitled to, under section 227(b)(3)(B), a minimum of $500.00 in damages for each violation of such act.

53. Additionally, because the messages steadily continue despite multiple requests that they STOP, the violations are capable of repetition, even if Defendant were to temporarily place them on hold. As such, an injunction is required to ensure that Defendants cease their illicit calling activities.

THIRD CAUSE OF ACTION
Violation of 47 U.S.C. § 227 *et seq*.
(On behalf of the Plaintiffs and Do Not Call Registry Class)

54. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

55. 47 U.S.C. § 227(c) provides that any "person who has received more than one telephone call within any 12-month period by or on behalf of the same

entity in violation of the regulations prescribed under this subsection may" bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object.

56. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."

57. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) "are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, 'Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,'" which the Report and Order, in turn, provides as follows:

> The Commission's rules provide that companies making telephone solicitations to residential telephone subscribers must comply with time of day restrictions and must institute procedures for maintaining do-not-call lists. For the reasons described above, we conclude that these rules apply to calls made to wireless telephone numbers. We believe that wireless subscribers should be afforded the same protections as wireline subscribers.

58. 47 C.F.R. § 64.1200(d) further provides that "[n]o person or entity

shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) Written policy. Persons or entitles making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such

request . . . .

(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

59. Onyx violated § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to wireless telephone subscribers such as Plaintiff and the

Do Not Call Registry class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government. These consumers requested to not receive calls from Onyx, as set forth in § 64.1200(d)(3).

60. Onyx made more than one unsolicited telephone call to Plaintiff and members of the Do Not Call Registry class within a 12-month period without their prior express consent to receive such calls. Plaintiff and members of the Do Not Call Registry class never provided any form of consent to receive telephone calls from Onyx, and/or Onyx does not have a current record of consent to place telemarketing calls to them.

61. Onyx violated § 64.1200(d) by initiating calls for telemarketing purposes to residential and wireless telephone subscribers, such as Plaintiff and the Do Not Call Registry class, without instituting procedures that comply with the regulatory minimum standards for maintaining a list of persons who request not to receive telemarketing calls from them, and failing to inform and train its personnel involved in any aspect of telemarketing of the existence and use of any such do not call list.

62. Onyx violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call Registry class received more than one telephone call in a 12-month period

made by or on behalf of Onyx in violation of 47 C.F.R. § 64.1200, as described above. As a result of Onyx's conduct as alleged herein, Plaintiff and the Do Not Call Registry class suffered actual damages and, under section 47 U.S.C. § 227(c), are each entitled, inter alia, to receive up to $500 in damages for such violations of § 64.1200.

63. To the extent Onyx's misconduct is determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages recoverable by the members of the Do Not Call Registry class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Michael Mayer, on behalf of himself and the classes, prays for the following relief:

1. An order certifying this case as a class action on behalf of the Classes as defined above; appointing Plaintiff Mayer as the representative of the Class and appointing his attorneys' as Class Counsel;

2. An award of actual and statutory damages;

3. An injunction requiring Defendants to cease all wireless spam activities, and otherwise protecting the interests of the Classes;

4. A declaration that Defendants' made the text message calls at issue utilizing an automated telephone dialing system;

5. A declaration that Defendants' made the text message calls at issue without securing prior express consent;

6. A declaration that Defendants' failed to honor STOP requests and that Plaintiff had a write to revoke any supposed consent;

7. An award of reasonable attorneys' fees and costs; and

8. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiffs request a trial by jury of all claims that can be so tried.

Respectfully Submitted,

MICHAEL MAYER, individually and on behalf of all others similarly situated,

Dated: February15, 2016 By: _/s/ Jennifer A. Jordan____

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Counsel for Plaintiff and the Putative Class
**pro hac vice* admission to be filed

LOCAL RULE 5.1 CERTIFICATION

I hereby certify that I filed the above and foregoing with the Clerk of the Court and that such paper complies with Local Rule 5.1 and was prepared using a typeface of 14 points in Times New Roman.

/s/ Jennifer Auer Jordan
Jennifer Auer Jordan